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REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FORTY-EIGHTH SESSION

Report of the Secretary-General

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I. INTRODUCTION

1. On 11 December 1995, the General Assembly adopted resolution 50/45, entitled "Report of the International Law Commission on the work of its forty-seventh session". In paragraph 10 of that resolution, the Assembly requested the Secretary-General to invite Governments to comment on the present state of the codification process within the United Nations system and to report thereon to the General Assembly at its fifty-first session.

2. By a note dated 21 December 1995, the Secretary-General invited Governments to submit their comments pursuant to paragraph 10 of resolution 50/45.

3. As at 12 September 1996, a reply had been received from Japan; it is reproduced in section II below. Additional replies will be reproduced as addenda to the present report.

II. COMMENTS RECEIVED FROM GOVERNMENTS

JAPAN

[Original: English]

[29 August 1996]

1. Certain members of the Sixth Committee may feel that the unsatisfactory progress the codification process has made recently may be attributable to the fact that, with the completion of work on many of the major topics traditionally identified as ripe for codification, further such work is unnecessary. The Government of Japan does not share this view. International law remains indefinite and underdeveloped in various areas, and even in those areas in which codification has taken place and legislative treaties have been adopted, practice is constantly changing and difficulties arise which make it necessary to address matters afresh. Accordingly, there continues to be a need for an orderly process of "codification and progressive development". The recent failure in the field of codification, if it is indeed a failure, is jointly attributable to the Sixth Committee and to the International Law Commission. The Government of Japan fully agrees as to the need referred to in the seventh preambular paragraph of General Assembly resolution 50/45 "to enhance further the interaction between the Sixth Committee as a body of government representatives and the International Law Commission as a body of independent legal experts, with a view to improving the dialogue between the two organs". The process must be one in which the two organs together select topics in response to real and current needs of the international community, continually exchange views as the work of codification proceeds and see to it that the results of that work are implemented expeditiously as legal instruments.

2. However, it would be more constructive to deal with specific problems than to offer general observations. The International Law Commission completed its work on "the Convention on Jurisdictional Immunities of States and their Property" in 1991. After intensive consultation for three years in the Sixth

Committee, the convention was shelved until 1997. It is regrettable that a final decision on this instrument has been delayed when every country has had ample opportunity to contribute to its elaboration, and it is to be hoped that the matter can indeed be resolved next year. In another instance, draft articles on the law of the non-navigational uses of international watercourses were completed by the Commission in 1994. As Governments have already had more than enough time to review them, it is earnestly to be hoped that the Sixth Committee will finalize its work at its 1996 session in accordance with the relevant General Assembly resolution of 1994.

3. It is further to be noted that, in addition to its traditional assignment of codification and progressive development through the formulation of draft articles, the International Law Commission might be asked to undertake two studies that would contribute to the refinement of international law. One would be a review of State practice in connection with previously codified conventions, e.g., the law of treaties, diplomatic and consular relations. The other would be an effort to identify those areas such as the environment in which laws are being developed sector by sector or regionally and bilaterally, involving a risk of fragmentation and inconsistency.